DATE: August 22, 1994
CASE NO. 94-ERA-7

IN THE MATTER OF

WILLIAM S. ARMIJO,

COMPLAINANT,

v.

WACKENHUT SERVICES, INC. and
U.S. DEPARTMENT OF ENERGY,

RESPONDENTS.

BEFORE: THE SECRETARY OF LABOR

FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT

This case arises under the employee protection provision of the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851 (1988 and Supp. IV 1992). The Administrative Law Judge (ALJ) issued a decision recommending that the settlement be approved on June 13, 1994. The parties submitted a Stipulation of Settlement and Dismissal seeking approval of the settlement and dismissal of the complaint. Because the request for approval is based on the agreement entered into by the parties, I must review it to determine whether the terms are a fair, adequate and reasonable settlement of the complaint. 42 U.S.C. § 5851(b)(2)(A) (1988). *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. U.S. Dep't of Labor*, 885 F.2d 551, 556 (9th Cir. 1989); *Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9, 89-ERA-10, Sec. Order, Mar. 23, 1989, slip op. at 1-2.

The agreement appears to encompass the settlement of matters arising under various laws, only one of which is the ERA. *See* ¶¶ 1, 2(b), and 4. For the reasons set forth in *Poulos v.*

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Ambassador Fuel Oil Co., Inc., Case No. 86-CAA-1, Sec. Ord., Nov. 2, 1987, slip op. at 2, I have limited my review of the agreement to determining whether its terms are a fair, adequate

and reasonable settlement of the Complainant's allegations the Respondent violated the ERA.

Paragraph 4 of the agreement could be construed as a waiver by the Complainant of any causes of action he may have which arise in the future. As the Secretary has held in prior cases, *see Johnson v. Transco Products, Inc.*, Case No. 85-ERA-7, Sec. Ord. Approving Settlement, Aug. 8, 1985, such provision must be interpreted as limited to the right to sue in the future on claims or causes of action arising out of facts or any set of facts occurring before the date of the agreement. *See also Alexander v. Gardner-Denver Co.*, 45 U.S. 36, 51-52 (1974); *Rogers v. General Electric Co.*, 781 F.2d 452, 454 (5th Cir. 1986).

Paragraph 3 provides that the parties "will keep confidential and not divulge the payment amounts listed in attachment 1, unless required to do so by law." The parties submissions, including the agreement and attachment, become part of the record of the case and the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1988), requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act. [1] *See Debose v. Carolina Power & Light Co.*, Case No. 92-ERA-14, Ord. Disapproving Settlement and Remanding Case, Feb. 7, 1994, slip op. at 2-3 and cases there cited.

I find that the agreement, as here construed, is a fair, adequate and reasonable settlement of the complaint. Accordingly, I APPROVE the agreement and DISMISS THE COMPLAINT WITH PREJUDICE. Paragraph 1.

SO ORDERED.

ROBERT B. REICH
Secretary of Labor

Washington, D.C.

[ENDNOTES]

[1] Pursuant to 29 C.F.R. § 70.26(b), submitters may designate specific information as confidential commercial information to be handled as provided in the regulations. When FOIA requests are received for such information, the Department of Labor will notify the submitter promptly, 29 C.F.R. § 70.26(c); the submitter will be given a reasonable amount of time to state its objections to disclosure, 29 C.F.R. § 70.26(e); and the submitter will be notified if a decision is made to disclose the information, 29 C.F.R. § 70.26(f). If the information is withheld and a suit is filed by the requester to compel disclosure, the submitter will be notified, 29 C.F.R. §70.26(h).